

House and Senate Committee Organization and Jurisdiction: Considerations Related to Proposed Department of Homeland Security

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The creation of a Department of Homeland Security, along the lines proposed by the Administration, would affect the jurisdiction of numerous House and Senate committees. In addition, the expansiveness of the proposal may cause Congress to consider using alternative procedures and structures to review the proposal and to monitor the implementation of such a new department.

This report discusses the current legislative jurisdictions of House and Senate committees with responsibility over terrorism, homeland security, and the agencies affected by the proposed new department. It also examines alternative procedures and structures Congress might employ in studying the proposal, such as creating a select committee. Finally, it identifies options for committee organization to monitor a Department of Homeland Security after its creation.

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House and Senate Committee Organization and Jurisdiction: Considerations Related to Proposed Department of Homeland Security

Decentralization is the most distinctive characteristic of the congressional committee system. Due to the high volume and complexity of its work, Congress divides its legislative, oversight, and internal administrative tasks among numerous standing and select committees. The House and Senate each have their own committees and related rules of procedure, which are similar, but not identical. Within their respective areas of responsibility, committees generally operate rather independently of each other and of their parent chambers. The difficult tasks of aggregating committees' activities, and of integrating policy in areas where jurisdiction is shared, fall largely to the chambers' party leadership.

Determination of Committee Jurisdiction and Referral: Rules and Practice

In considering jurisdiction, a distinction needs to be made between legislative and oversight jurisdiction. The former denotes the authority to report measures to the full chamber; the latter, to review or investigate. Although oversight jurisdiction may be the product of a specific legislative enactment, it also accrues when committees accept responsibilities for broad topical areas. Hence, there are more likely to be broader and more frequent overlaps in oversight jurisdiction than in legislative jurisdiction. Legislative jurisdiction, however, has occasioned the majority of open conflicts between committees.

Senate

Senate Rule XXV generally identifies broad issues handled by each standing committee, although not all issues within a committee's purview are specified. Further, these jurisdictional descriptions do not explicitly identify each committee's jurisdiction over particular measures, or over (1) executive branch departments and agencies, (2) particular offices within these departments and agencies, or (3) programs operated by these departments and agencies. A committee's jurisdiction over an executive department or agency generally is implied by its jurisdiction over the issues the department or agency handles.

Measures introduced in the Senate, or passed by the House and sent to the Senate, are referred to Senate committees in accordance with Rule XXV jurisdiction and with precedents established by prior referrals. Formal agreements between committees reached over time can supplement Rule XXV, and are regarded by the Parliamentarian as setting precedent for future referrals. An ad hoc agreement may be made to govern the consideration of a particular measure, but such an agreement is not binding on future referrals.

Under Senate Rule XVII, each measure is referred to a single committee based on the "subject matter which predominates" in the legislation. Predominance is usually determined by the extent to which a measure deals with a subject. However, there are exceptions; notably, a measure containing revenue provisions is likely to be referred to the Finance Committee, even when the subject does not predominate.

Senate Rule XVII further allows a measure to be referred to multiple committees for consideration. The Senate typically makes multiple referrals by unanimous consent after

negotiations among interested parties. A measure may also be multiply referred by joint motion of the majority and minority leaders or their designees; however, this motion has never been used.

House

Paramount in determining committee jurisdiction in the House is House Rule X. The formal provisions of the rule are supplemented by an intricate series of precedents and formal and informal agreements governing the referral of legislation. In general, based on precedent, once a measure has been referred to a given committee, it remains within the jurisdiction of that committee. If the measure is enacted into law, amendments to the law are presumed to be within the originating committee's jurisdiction. Bills that are more comprehensive than the measure they amend or supersede are presumed to be within the jurisdiction of the committee reporting the more comprehensive measure.

Written agreements, drafted among committees to stipulate their understanding of jurisdictional boundaries, have been used in recent years. If legislation is considered on the House floor, such agreements are traditionally inserted into the *Congressional Record*. House parliamentarians, in advising the Speaker, have generally considered themselves bound by such an agreement when it is supported by all the committees concerned and when the House, usually by unanimous consent, has given its assent to the agreement.

In 1974, with the adoption of the Committee Reform Amendments, the House authorized the Speaker to refer measures to more than one committee, in a joint, split, or sequential manner. In 1995, with the rules changes adopted in the 104th Congress, the Speaker's authority to multiply refer measures was changed. The Speaker no longer could refer measures jointly; he was authorized instead to designate a primary committee. Split and sequential referrals were still allowed. Further, the Speaker could impose time limitations on any committee receiving a referral.

Committees with Jurisdiction over Homeland Security

The following tables identify House and Senate committee jurisdiction over homeland security issues. Included is language from the official chamber rules, notation of issues often cited as relating to homeland security whether or not they are included in the scope of the new department, and designation of jurisdiction over agencies proposed by the President for transfer to a new Department on Homeland Security. Although extensive, these tables are intended to be representative, rather than comprehensive.

Table 1. House Committees with Rule X Language and Jurisdiction Over Issues and Agencies Related to Homeland Security	
Agriculture	Animal and Plant Health Inspection Service; Plum Island Animal Disease Center; Food Safety and Inspection Service
Appropriations	"appropriation of the revenue for the support of the Government"
Armed Services	"Department of Defense, generally..."; "military applications of nuclear energy"; "national security aspects of merchant marine..."; "strategic and critical materials necessary for the common defense"

Table 1. House Committees with Rule X Language and Jurisdiction Over Issues and Agencies Related to Homeland Security	
Energy and Commerce	<p>“biomedical research and development”; “public health...”</p> <p>bioterrorism; public health and environment; national pharmaceutical stockpile; all aspects of energy, including nuclear energy; telecommunications; Nuclear Regulatory Commission</p>
Financial Services	“...defense production...”
Government Reform	<p>“Overall economy, efficiency, and management of government operations and activities...”;</p> <p>“Reorganization in the executive branch of government”</p>
House Administration	oversight over physical security, information security, and emergency preparedness for the House and Capitol complex
Intelligence	Central Intelligence Agency; intelligence and intelligence related activities of all agencies and departments; organization of government at it relates to intelligence
International Relations	<p>“relations of the United States with foreign nations generally”</p> <p>Department of State; international security; non-proliferation and disarmament; international crime</p>
Judiciary	<p>“...mutiny, espionage...”; “subversive activities affecting the internal security of the United States”</p> <p>Immigration and Naturalization Service; Federal Bureau of Investigation ; Drug Enforcement Agency; Secret Service; Bureau of Alcohol, Tobacco, and Firearms; Border Patrol</p>
Resources	National Park Service; dams; public lands; water and power
Science	non-defense federal scientific research and development; FEMA (shared); National Institute of Science and Technology (NIST); DOE laboratories; DOE science activities
Transportation and Infrastructure	<p>“Coast Guard...”; “federal management of emergencies...”</p> <p>FEMA (shared); Transportation Security Administration; Federal Aviation Administration; Federal Highway Administration</p>
Veterans Affairs	backup medical provider to Department of Defense
Ways and Means	trade, including trade aspects of the Customs Service

Table 2. Senate Committees With Rule XXV Language and Jurisdiction Over Issues and Agencies Related to Homeland Security	
Agriculture	Animal and Plant Health Inspection Service; Plum Island Animal Disease Center
Appropriations	"appropriation of the revenue for the support of the Government"
Armed Services	"Department of Defense"; "national security aspects of nuclear energy"; "military research and development"; "strategic and critical materials necessary for the common defense"
Banking, Finance and Urban Affairs	"...defense production"
Commerce, Science, and Transportation	"Coast Guard..."; "highway safety"; "...consumer products...including testing related to toxic substances"; telecommunications; federal research and development
Energy and Natural Resources	"energy policy"; DOE national laboratories; national parks; public lands
Environment and Public Works	"environmental effects of toxic substances"; "public buildings and grounds"
Foreign Relations	"national security"; "treaties..."; "diplomatic service"; "relations of U.S. with foreign nations"
Finance	trade
Governmental Affairs	"organization and reorganization of the executive branch"
Health, Education, Labor, and Pensions	"public health"
Intelligence	Central Intelligence Agency
Judiciary	"...espionage..." Secret Service; Immigration and Naturalization Service; Border Patrol; computer security
Rules and Administration	oversight over physical security, information security, and emergency preparedness for the Senate and Capitol complex
Veterans Affairs	backup medical provider to the Department of Defense

To Consider Proposals to Create a Department of Homeland Security: Options for Congressional Organization

Dispersed responsibility over specific topics of public policy has identifiable benefits and costs. When several committees in both chambers can claim some share of responsibility for a policy area, competition for legislative and oversight prominence serves to spur committee activity among all the panels asserting jurisdiction. House and Senate rules encourage such competition, especially in the area of oversight, by granting specified committees oversight jurisdiction that is far broader than their legislative authority. Such grants of power may encourage overlapping efforts among committees and may guarantee that a specified policy area is not ignored by

congressional committees. Dispersed policy responsibility, conversely, may also inhibit the development of a comprehensive policy. When no single committee can claim exclusive legislative jurisdiction over a specific subject, it may be difficult or impossible to enact comprehensive legislation.

This section addresses ways the Congress could organize itself to consider the proposal to create a Department of Homeland Security.

Present system

Congress could decide to make no alteration to its established procedures or to the established roles and jurisdictions of its current committees. It could be argued that dispersed congressional authority over this broad subject assures that many different perspectives will be brought to bear on congressional action in this area. The House committee with jurisdiction over executive organization, the Committee on Government Reform, would presumably receive the primary referral of legislation to create a new Cabinet department. In the Senate, the Governmental Affairs Committee has predominant jurisdiction and has already reported related legislation on the subject.¹

Informal Task Force

Task forces are normally used when committee jurisdiction is divided among several panels, or when partisan intensity appears likely to delay or prevent committee action. Task forces have no independent staffing resources nor do they have institutional powers granted to committees. However, task forces are able to work quickly because they can work informally. Party leaders or party caucuses typically create such task forces. In appropriate circumstances, bipartisan or bicameral task forces could be created, but task forces typically have been single-party and single-chamber organizations. If a task force were to be created to review the proposal to create a Cabinet department, questions would exist about it. For example, would the task force have the authority to draft and report legislation? Would it be bipartisan? Bicameral? Would its work product need to be reviewed by one or more established committees with the authority to report legislation?

Specialized subcommittee

The House and Senate have occasionally made use of special subcommittees with augmented authority to handle specific issues on a short-term basis. Although such subcommittees would have expanded authority, they still must operate as part of their parent committees. They lack the perceived authority that comes with being a stand-alone committee.

Select committee

The House and Senate have long made use of select committees to review policies that do not fit neatly into the jurisdictions of any single House or Senate committee. However, it is rare for select committees to be granted legislative jurisdiction. The Senate most recently created a Select Committee on Y2K and the House created a Select Committee on U.S. National Security and

¹ The measures to create the Departments of Transportation, Veterans Affairs, Education, HHS, and HUD, all were referred to the House Committee on Government Reform and the Senate Committee on Governmental Affairs. The measure to create the Department of Energy was jointly referred to the Committee on Government Reform and the Committee on Post Office and Civil Service, a panel abolished in 1995; its jurisdiction was absorbed by the Committee on Government Reform.

Military/Commercial Concerns with the People's Republic of China. Both panels were created by resolution with a fixed termination date. With the exception of the House and Senate Intelligence Committees, Congress has been reluctant in recent years to establish permanently authorized select committees.

If a select committee with legislative jurisdiction were to be established, issues exist whether the chamber creating it would give the select committee exclusive jurisdiction to work on the proposal, or whether the new panel would share jurisdiction with standing committees. Alternatively, a select committee could be established to study an issue and to submit its findings to the appropriate legislative committees of its parent chamber for further action.

Ad hoc committee

House rules permit the Speaker to appoint an ad hoc committee to coordinate legislation on specified subjects. Typically, the House establishes such an ad hoc committee by resolution, and draws committee members largely from the House standing committees having legislative jurisdiction over a subject area. Such ad hoc committees typically review legislation reported from standing committees before such bills are considered by the House. This allows the ad hoc committee to enforce some degree of policy coherence on a subject that falls within the jurisdiction of a number of House panels. The House used such ad hoc committees twice in the 1970s, the Ad Hoc Committee on the Outer Continental Shelf and the Ad Hoc Committee on Energy. The Senate has never established an ad hoc panel, but nothing in its rules would prohibit it from doing so.

Joint committee

The House and Senate could agree, typically by concurrent resolution or bill, to establish a joint committee. Joint committees typically are named to study or coordinate policy review. Only one joint committee in recent years has been granted legislative jurisdiction, the Joint Committee on Atomic Energy, 1947-1977. Joint committees have the advantage of establishing one focal point within Congress on a specific subject area. However, unless legislative jurisdiction were granted to a joint committee, its ability to streamline legislative action would likely be minimal. Alternatively, the House and Senate could establish their own individual select committees, which could conduct joint hearings or other activities.²

Standing committee (new)

Either or both chambers could create a new standing committee with legislative jurisdiction over the proposal. Such an action would require a change in chamber rules and possibly a realignment of existing legislative jurisdictions among the standing committees. Congress has historically found it difficult to reapportion committee jurisdictions, especially in the middle of a Congress or in the midst of intense policy concern. The committee might not absorb jurisdiction from existing committees, but could comprise members from relevant committees.

²In the absence of formal action by either chamber, House and Senate standing committees could be encouraged by chamber leaders to conduct studies and hold hearings jointly in the interest of efficiency.

Options for Congressional Organization and for Legislative and Oversight Jurisdiction over a New Cabinet Department of Homeland Security

If a new department is created, regardless of how the proposal was handled to establish the new department, Congress might still need to address the issue of which House and Senate committees would have legislative and oversight responsibility over its activities. Several outside groups have recently provided recommendations on the appropriate organization of House and Senate committees over issues related to terrorism and homeland security.

The National Commission on Terrorism (“Bremer Commission”) recommended congressional reform and found that “Congress should develop a mechanism for reviewing the President’s counterterrorism policy and budget as a whole....”³

The Center for Strategic and International Studies Working Group on Homeland Defense stated, “The objective would be for each legislative body to have only one authorization and one appropriations committee for cyber threats, [chemical, biological, radiological, and nuclear] terrorism, and critical infrastructure protection.”⁴

The U.S. Commission on National Security/21st Century (“Hart-Rudman Commission”) recommended that Congress “form a special select committee for homeland security to provide congressional support and oversight...”⁵

The Advisory Panel to Assess the Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (“Gilmore Commission”) stated, “We recommend the establishment of a Special Committee for Combating Terrorism- either a joint committee between the Houses or a separate committee in each House-to address authority and funding, and to provide Congressional oversight, for Federal programs and authority for combating terrorism.”⁶

Retain current structure

Congress could decide that the current system is sufficient to monitor the work of the new department. No changes would be made in either jurisdiction or referral procedures. The programs, activities, and units of the Department of Energy, for example, are within the jurisdiction of more than one committee in each chamber. Retaining the current committee structure in either or both chambers could create jurisdiction struggles among committees claiming to be the primary (House) or predominant (Senate) committee.

³ National Commission on Terrorism. *Countering the Changing Threat of International Terrorism: Report of the National Committee on Terrorism*. 105th Cong., 2nd sess., <http://www.terrorism.com/documents/bremercommission/index.shtml>.

⁴ Center for Strategic and International Studies Working Group Reports on Homeland Defense, *Combating Chemical, Biological, Radiological, and Nuclear Terrorism: A Comprehensive Strategy*. [<http://www.csis.org/homeland/reports/defendamer21stexecsumm.pdf>].

⁵ U.S. Commission on National Security/21st Century, *Road Map for National Security: Imperative for Change*. 2001., p., ix.

⁶ Advisory Panel to Assess the Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *Second Annual Report: Toward a National Strategy for Combating Terrorism*.

Reorganize entire system

Either or both chambers could undertake an extensive reorganization of the committee system. Both chambers have done so in recent years, although in varying degrees. The Joint Committee on the Organization of Congress in the 103rd Congress considered numerous options for such a reorganization.⁷ Either chamber could reorganize without the approval of the other. One option would be for a parallel committee structure between the chambers.⁸

Realign committee jurisdiction

Within the existing system, either or both chambers could choose to realign their committee jurisdictions within the existing structure. This would entail changing chamber rules. Past experience indicates that Members generally have been loathe to overhaul the committee system, especially in the middle of a Congress. However, rules changes are traditionally adopted at the beginning of a new Congress, and changes could be drafted after the adjournment of the 107th Congress and included in the package of rules changes voted on at the convening of the 108th Congress.

Change referral system

Both chambers generally refer measures to a single committee, by determining primary jurisdiction in the House and predominant jurisdiction in the Senate. In the House, sequential referrals do occur. In the House especially, joint, simultaneous referrals were allowed until 1995. Changing the referral system could enable all interested committees to maintain legislative and oversight jurisdiction. For example, the Speaker of the House, who has the authority to impose time limits on referrals, could be required to impose them on all committees involved in a multiple referral. In addition, for legislation on homeland security, the House could allow joint referrals. In the Senate, which generally requires unanimous consent for multiple referral absent a formal agreement, the party leadership could invoke its authority to make joint referrals.

Create new standing committee over homeland security

A new standing committee could be created in either or both chambers. Such a panel could have legislative responsibility over all aspects of a new Department of Homeland Security. Questions regarding whether the new committee would absorb jurisdiction from existing panels or overlap with them would need to be decided. Would special oversight authority be granted to a new committee? Creating a new standing committee would require a change in chamber rules.

Create select committee over homeland security

Members in both the House and Senate have introduced resolutions to create select committees. In the House, Representative J.C. Watts (R-OK), introduced H.Res. 52, which states that Congress “should establish a panel to examine the adequacy of its committee structure to deal with issues related to domestic terrorism and to consider the creation of more effective structures, including a Select Committee on Domestic Terrorism.” Senator Pat Roberts (R-KS), introduced S.

⁷ Joint Committee on the Organization of Congress, Background Materials: Supplemental Information Provided to Members of the Joint Committee on the Organization of Congress. 103rd Cong., 1st sess. pp. 608-788.

⁸ Such a restructuring would enable the chambers to also address other committee jurisdiction and organization issues. For example, reports have indicated the possibility of re-creating a House Committee on Merchant Marine and Fisheries.

Res. 165 to create a Select Committee on Homeland Security and Terrorism, with the panel having “primary and preeminent” jurisdiction over homeland security and terrorism.

Select committees generally are not granted legislative jurisdiction. If such a new panel were created, would it have legislative authority? If so, would other committees receive sequential referrals of their legislative product? If such a select committee were created without legislative jurisdiction, its finding and recommendations would need to be transferred to a standing committee.

Realign Appropriations Committee’s Subcommittees

The only panels in Congress with closely parallel structures are the House and Senate Appropriations Committees. Each could create a 14th subcommittee on homeland defense, which would have responsibility over the funding for the new department and the entities transferred to it. This subcommittee could be created irrespective of any legislative or oversight jurisdictional changes.

Create a joint committee on homeland security

The House and Senate could create a joint committee to oversee the work of a new department. However, only one joint committee in the last half-century has been granted legislative jurisdiction. If such a joint panel were created, the question of sequential referrals to existing standing committees could still be raised.

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